



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

July 30, 2008

Control No. AP-08-0708-02  
Impacted IRMs: 8.22.2 & 8.23.3

MEMORANDUM FOR DIRECTOR, FIELD OPERATIONS - EAST  
DIRECTOR, FIELD OPERATIONS - WEST  
DIRECTOR, APPEALS PROCESSING SERVICES  
DIRECTOR, TECHNICAL GUIDANCE

FROM: Diane S. Ryan /s/ *Diane S. Ryan*  
Director, Technical Services

SUBJECT: Interim Guidance: Corporate Trust Fund Offer in Compromise  
Procedures for Appeals

***This memorandum supplements an interim guidance memorandum issued by Collection. It provides information for Appeals employees concerning processing and evaluating corporate trust fund offers in compromise. This guidance will be incorporated into the next revision of the Internal Revenue Manual and is effective for one year from the date of this memorandum.***

Collection issued [Interim Guidance for Corporate Trust Fund Offers in Compromise](#) on January 28, 2008. The term "corporate" refers to any type of entity with unpaid trust fund tax where assertion of the Trust Fund Recovery Penalty (TFRP) is applicable. The new procedures affect how Appeals must handle corporate trust fund offers received after February 4, 2008 as part of a Collection Due Process (CDP) or Equivalent Hearing (EH) case, but have no apparent impact on Appeals for non-CDP/EH offers. The procedures in the September 1, 2005 revision of [IRM 5.8.4.13.2](#) remain in effect for all CDP and non-CDP corporate trust fund offers received by either Collection or Appeals prior to February 4, 2008.

If you have any questions, please contact Judith Clark, Acting Director, Tax Policy and Procedure or a member of your staff may contact Dale Veer, OIC Program Analyst, at 651-726-7430.

Attachment

cc: [www.irs.gov](http://www.irs.gov)

## Updated Corporate Trust Fund Offer Procedures for Appeals

### Section 1: Background

[IRM 5.8.4.13.2 \(Rev. 9/2005\)](#) provides that the amount offered to compromise a corporate liability involving trust fund tax must include the amount that may be collected from:

- The corporate entity, and
- All persons responsible for the Trust Fund Recovery Penalty (TFRP) up to the amount of the TFRP, plus interest, if assessed.

IRM 5.8.4.13.2 (Rev. 9/2005) procedures remain in effect for all offers (CDP and non-CDP) received by either Collection or Appeals prior to February 4, 2008. Actual assessment of the TFRP is not necessary as part of evaluating a pre-February 4, 2008 corporate offer. Under these procedures, the Service will continue to pursue any unpaid trust fund tax even if an offer is accepted from the corporation despite the fact the amount collectible from all responsible persons was included in the corporate offer.

On January 28, 2008, Collection issued [Interim Guidance for Corporate Trust Fund Offers in Compromise](#). The new procedures provide the following changes for all corporate offers involving trust fund taxes received on or after February 4, 2008:

- Only the amount representing the reasonable collection potential (RCP) of the corporation is needed to compromise a corporate trust fund liability. The RCP of the person(s) responsible for the TFRP is no longer needed as part of the corporate trust fund offer, and
- The trust fund portion of the tax liabilities must be paid or the TFRP either assessed or forwarded (by Collection) for assessment before the corporate offer may be evaluated.

### Section 2: General Procedures for Appeals

The changes to procedures for corporate offers involving trust funds have no significant impact on how Appeals will handle non-CDP/EH offers because Collection will have already addressed all aspects of the offer affected by the changes.

However, the manner in which Appeals processes and evaluates corporate offers involving trust funds received as part of a CDP or EH case is significantly affected and will in some instances require Appeals to work with Collection on certain aspects of the offer before we even know whether the offer can be considered. *Ex parte* provisions apply, so limit contact to that described within this interim guidance document and document the case activity record accordingly.

**Note:** If a **non-CDP** corporate trust fund OIC received by the Service **after** February 4, 2008 is received in Appeals and the trust fund tax is neither paid nor the TFRP assessed (unless Collection has clearly documented either a non-assertion determination or that the case is under LEM 5.7 criteria), Appeals should return the offer as a premature referral until the TFRP is properly addressed.

#### Pre-offer actions

Collection will return an offer as “submitted solely to delay” if the corporation submits the offer **after** its principal(s) was advised that the trust fund portion must be paid or the TFRP assessed before the offer

may be evaluated and neither event has occurred. Appeals does not “return” an offer to a taxpayer like Collection does, but may use the same criteria as a basis to not accept a corporate offer involving trust funds received as part of a CDP/EH case.

The Collection employee may have documented discussion of the pre-offer requirements with the taxpayer prior to referring the case to Appeals. However, if there is no indication Collection explained the corporate OIC requirements to the taxpayer, Appeals must properly advise the taxpayer that the trust fund balance must be paid or TFRP assessed before a corporate offer involving trust fund tax may be evaluated. Be sure to clearly document the case activity record. Knowing the outstanding trust fund amount prior to the conference may be a time-saving practice in the event the corporate taxpayer wants to discuss an OIC.

**Note:** Appeals may proceed with rejecting a corporate offer involving trust funds without payment of the trust fund balance or assessment of the TFRP **only** if the basis for the offer's rejection is either public policy or that acceptance is not in the government's best interest. In these cases, RCP is not the issue causing Appeals to deny the offer so it is not appropriate for Collection to complete a TFRP investigation when Appeals knows in advance the offer cannot be accepted. Appeals Team Manager (ATM) concurrence is required before the Appeals Officer/Settlement Officer proceeds with closing the CDP offer without first asking Collection to complete the TFRP investigation. [Delegation Order 5-1](#) must also be followed after the ATM agrees the public policy or the not in the best interest rejection is the appropriate basis for the offer's rejection and thus assessment of the TFRP assessments is not needed.

#### Trust Fund Computation

The taxpayer has the option of paying the trust fund portion of the unpaid tax to have the corporate offer evaluated. The corporate taxpayer also has the right to designate the OIC payments made prior to the offer being accepted, so there may be instances, such as receipt of a periodic payment offer, where Appeals needs to know the trust fund amount to apply designated payments properly.

In most instances, Appeals will be able to compute the trust fund amount simply by following the instructions in [IRM 5.7.4.3](#). In the cases where computing the trust fund amount is difficult or time-consuming because of multiple periods, numerous payments, TC 290/300 issues, etc., Collection has agreed to provide Appeals with the trust fund computations using the Automated Trust Fund Recovery (ATFR) program. Simply forward an encrypted e-mail containing the corporate taxpayer's name, Taxpayer Identification Number, and the periods involved to the Tax Policy & Procedure program analyst in charge of the OIC program (presently [Dale Veer](#)). Generally, the trust fund computation will be e-mailed back to the AO/SO within 5-7 business days. To avoid *ex parte* concerns, provide the taxpayer with a copy of Collection's trust fund computation.

#### Corporate Trust Fund Offer Procedures for CDP/EH Case

Use the following table to determine necessary actions when addressing various issues and scenarios concerning a corporate trust fund offer received as part of a CDP/EH case:

If...	Then...
<p>The corporate taxpayer wants to discuss submitting an OIC and has not previously discussed the same with Collection.</p>	<p>Fully explain the OIC process making sure to advise the taxpayer that:</p> <ul style="list-style-type: none"> <li>• acceptance of the corporate offer does not preclude IRS from pursuing collection of the TFRP,</li> <li>• the corporation must either pay the trust fund portion in full or the TFRP must be assessed, and</li> <li>• an offer submitted without the trust fund portion being paid or TFRP assessed cannot be accepted</li> </ul> <p>Try to ascertain if the taxpayer has the ability to fully pay the trust fund amount. If the taxpayer indicates they want to pay the trust fund portion, provide the trust fund computation (see the "Trust Fund Computation" section of this memo for procedures). If the taxpayer can't pay the trust fund amount, let them know that a TFRP investigation with assessment(s) will be necessary if an offer is submitted.</p>
<p>The corporate taxpayer wants to pay the trust fund portion before submitting the offer</p>	<p>Compute the trust fund balance (see the "Trust Fund Computation" section of this memo for procedures). Give the taxpayer a reasonable amount of time (14-21 calendar days) to both pay the required trust fund portion and submit a complete OIC package.</p> <p><b>Note:</b> The taxpayer may designate the OIC's up-front TIPRA payment to pay the trust fund portion. The designation must be in writing.</p>
<p>The corporate taxpayer pays the trust fund portion in full</p> <p>(continued below)</p>	<p>Send the complete offer package to the appropriate COIC site for processing. Generate <a href="#">Form 3210</a> and Letters 3820 and 3821 on APGolf and forward the OIC package to COIC per standard procedure.</p> <p>Prepare a <a href="#">Form 4844</a>, Request for Terminal Action, for input of ASED R Definer Code 4 (see <a href="#">IRM 5.7.3.9.1</a>) to reflect full payment of the trust fund tax. ATM approval is needed on Form 4844 per IRM 5.7.3.9.1 (2).</p> <p>Attach the approved Form 4844 to an encrypted e-mail and send it to one of the following e-mail addresses based on the relative location of your Appeals office:</p>

If...	Then...
<p>(continued from above)</p> <p>The corporate taxpayer pays the trust fund portion in full</p>	<p>(continued from above)</p> <p><b>*SBSE CCS GCP EAST1</b> – includes the North Atlantic, South Atlantic, Central, and Midwest areas</p> <p><b>*SBSE CCS GCP WEST1</b> – includes the California and Western areas</p> <p><b>*SBSE CCS GCP WEST2</b> – includes the Gulf States areas</p> <p>The subject line of the e-mail should look like the following:</p> <p style="padding-left: 40px;">B 4844 ASEDR</p> <p>B = BMF 4844 = Form number</p>
<p>The corporate taxpayer does not/cannot pay the trust fund portion but submits an offer anyway and all responsible persons agree to assessment of the TFRP(s)</p>	<p>Send the offer to the appropriate COIC site for processing. Generate Form 3210 and Letters 3820 and 3821 on APGolf and forward the OIC package to COIC per standard procedure.</p> <p>Do not attempt to secure a Form 2751. Instead, follow the Appeals Referral Investigation (ARI) procedures listed below for “Trust Fund Investigations”</p>
<p>The corporate taxpayer submits an offer without first paying the trust fund portion or without all responsible persons agreeing to assessment of the TFRP despite being previously advised of the need to do so by either Collection or Appeals</p>	<p>The offer must still be sent to the appropriate COIC site for processing. Generate Form 3210 and Letters 3820 and 3821 on APGolf and forward the complete OIC package to COIC.</p> <p>If the offer is deemed processable, COIC will simply refer the processed offer back to Appeals per standard procedures. Appeals, however, may use the same criteria used by Collection to “return” the offer as a basis to not accept the CDP/EH offer. Appeals must still properly address any other issues raised as part of the CDP/EH case. Make sure the Determination/Decision Letter clearly states that the offer is rejected. This is necessary to properly close out the 24-month TIPRA period.</p>

If...	Then...
The corporate taxpayer submits an offer without first paying the trust fund portion or agreeing to assessment of the TFRP and the taxpayer was not advised of such requirement by either Collection or Appeals	<p>The offer must be sent to the appropriate COIC site for processing. Generate Form 3210 and Letters 3820 and 3821 on APGolf and forward the complete OIC package to COIC per standard procedures.</p> <p>Do not attempt to secure a Form 2751. Instead, follow the ARI procedures listed below for "Trust Fund Investigations"</p>
Collection completes its investigation, issues Letter 1153 and one or more of the persons against whom the TFRP is proposed files an appeal	The offer is considered submitted "solely to delay" collection and Appeals may use Collection's "return" criteria to deny the offer. Appeals must still properly address any other issues raised as part of the CDP/EH case. Make sure the Determination/Decision Letter clearly states that the offer is rejected. This is necessary to properly close out the 24-month TIPRA period.
<p>Collection completes its investigation and either:</p> <ul style="list-style-type: none"> <li>• Secures the Form 2751 with required LEM 5.7 documentation, or</li> <li>• Issues <a href="#">Letter 1153</a> and none of the persons against whom the TFRP is proposed appeals</li> </ul>	Proceed with evaluating the offer because the TFRP assessment(s) is considered pending.
Collection completes its investigation and determines <b>all</b> potentially responsible persons meet the <a href="#">IRM 5.7.5</a> criteria for non-assertion based upon collectibility	Proceed with evaluating the offer because the TFRP assessment(s) are not applicable. Document Collection's non-assertion determination(s) in the case activity record.

### Trust Fund Investigations

Appeals may proceed with evaluating a corporate offer involving trust funds if the TFRP is either assessed or is in the process of being assessed. Appeals will not be involved in any aspect of

- determining who is ultimately responsible for the TFRP,
- determining whether the TFRP taxpayer meets IRM 5.7.5 criteria for non-assertion based upon collectibility, or
- securing a signed Form 2751, Proposed Assessment of Trust Fund Recovery Penalty

The reasons why Appeals should not ask a willing taxpayer to sign a Form 2751 are:

1. A taxpayer who signs the Form 2751 retains the right to challenge the assessment by paying a divisible portion of the tax and filing a [Form 843](#) refund claim and this refund claim comes with appeal rights. The independence of Appeals (or at least the perception thereof) can be compromised if the signed Form 2751 was originally secured by Appeals, especially if the corporate trust fund CDP offer is rejected.

2. Appeals' is not generally able to sufficiently determine everyone who must sign a Form 2751 or secure the documentary evidence required under LEM 5.7.
3. Appeals procedures in [IRM 8.25.2.6](#) provide for securing a Form 2751, but only as part of a hazards of litigation settlement after Collection has completed the TFRP investigation.

Prepare a [Form 2209](#), Courtesy Investigation, to refer a case to a Collection Field group to complete the necessary TFRP investigation and assessment(s). Follow the general ARI procedures found in [IRM 8.22.2.2.8](#), except Collection should complete the ARI within 90 days instead of 45. The additional time is needed because IRC 6672(b) requires IRS to give the taxpayer 60 days to respond to the Letter 1153.

State the following in the "Remarks" section of the Form 2209:

"The taxpayer submitted an offer to compromise trust fund tax. Please complete a TFRP investigation in accordance with the procedures outlined in the January 28, 2008 memorandum from the Director of Collection Policy entitled *Interim Guidance for Corporate Trust Fund Offers in Compromise*. The earliest ASED expires \_\_\_\_\_."

Field Revenue Officers are responsible for all aspects of the TFRP, including ASEDs, on the CDP cases that originate from field Collection per [IRM 5.1.9.3.7](#). If an offer is received on a corporate CDP case received from ACS **and** there are fewer than six (6) months left on the earliest ASED, the Revenue Officer must follow the guidance in [IRM 5.7.3.7](#). If there are fewer than six (6) months left on the earliest ASED, be sure to prominently highlight the earliest ASED expiration date on the Form 2209.

Do not attach a copy of the [Form 656](#) or provide details of the offer with the Form 2209. Collection is being asked to conduct a TFRP investigation and has no need to know any details about the underlying corporate offer. Follow up with Collection within 30 days after the expiration of 90 days. Because of *ex parte* concerns, be sure to limit the discussion to the investigation's completion date. Document such contact in the case activity record.

Once the TFRP investigation is complete, Appeals may proceed with evaluating the offer unless one or more of the principals appeals the proposed TFRP assessment. Collection is fully responsible for all aspects of assessing the TFRP against the responsible person(s). Appeals will receive the results of their independent investigation. In this instance, Appeals is not required to share the results of the Form 2209 investigation with the taxpayer under *ex parte* rules.

Please contact Dale Veer, OIC Program Analyst at 651-726-7430 with any questions or concerns.